

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT (#FCU-13-07)**  
**SWAN JUNCTION INC.**  
**AUGUST 19, 2013**

A report to the Flathead County Board of Adjustment regarding a request by Anthony Welzenbach on behalf of Swan Junction Inc. for a conditional use permit to allow for multiple principal uses within one building on a single lot. The subject property is located within the Bigfork Zoning District and is zoned 'B-3 Community Business.'

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on September 3, 2013 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is located within the advisory jurisdiction of the Bigfork Land Use Advisory Committee. This space is reserved for an update regarding the August 29, 2013 review of the proposal.

**B. Board of Adjustment**

This space is reserved for an update regarding the September 3, 2013 Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Anthony Welzenbach  
25734 E. Lakeshore  
Bigfork, MT 59911  
(406) 249-7785

**ii. Landowner**

Swan Junction, Inc.  
25734 E. Lakeshore  
Bigfork, MT 59911

**B. Property Location and Size**

The subject property is located at 5 Swan Way near Bigfork, MT (see Figure 1 below). The property can be legally described as Lot 1B of Swan Junction Lot 1 Resubdivision in Section 13, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

**Figure 1:** Subject property outlined in red.



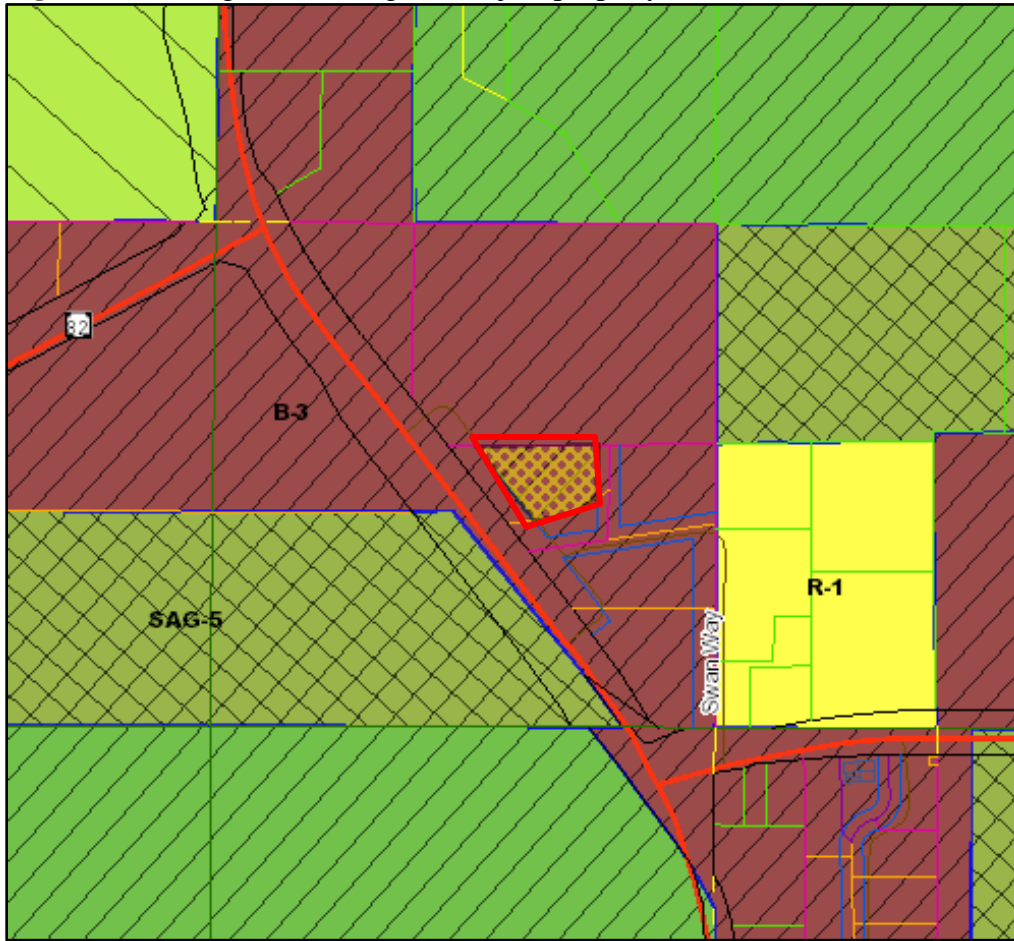
**C. Existing Land Use(s) and Zoning**

The property is currently developed with a single building for a previously permitted restaurant approved under FCU-04-31, and is approximately 1 acre. It is located within the Bigfork Zoning District and is zoned ‘B-3 Community Business’ a designation intended to *“provide areas for the development of congregated community shopping areas, to serve the range of a number of neighborhoods of a major segment of the Planning Area. This district should be a business center and not a strip development”* [Section 3.18.010 FCZR].

**D. Adjacent Land Use(s) and Zoning**

The surrounding properties are also zoned B-3. There is a small area zoned R-1 to the east, however it is not touching the subject property. Additionally, there is a property across Montana Highway 35 which is zoned SAG-5. The property directly to the north is an existing church and to the south is an existing coffee stand. The properties to the east and west across the highway are vacant.

**Figure 2:** Zoning surrounding the subject property (outlined in red).



**E. Summary of Request**

The applicant is proposing to establish multiple principal uses within the single building on the subject property. The uses include an 11 room hotel, casino, and art gallery in addition to the previously permitted restaurant/tavern under FCU-04-31. The B-3 zoning allows for an art gallery as a permitted use, while a hotel requires a Conditional Use Permit prior to commencement. The casino will be reviewed as a tavern per the definition found in Section 7.19.005 FCZR which was part of a text amendment approved January 4, 2010, and will include approximately 20 gaming machines. Taverns are also permitted in a B-3 zone with the issuance of a Conditional Use Permit. The property is almost entirely paved for parking, although there are currently no delineated parking spaces. The property has two existing approaches with the main access from Swan Way along the front of the lot, and the secondary access along Swan Way at the rear of the property. The proposed uses would be permitted subject to a conditional use permit for multiple principal uses, pursuant to Section 3.03.020(3) FCZR.

**F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on August 12, 2013, pursuant to Section 2.06.040(3) of the Flathead County Zoning

Regulations. Legal notice of the public hearing on this application will be published in the August 18, 2013 edition of the Daily Interlake.

#### **G. Agency Referrals**

Referrals were sent to the following agencies on July 30, 2013:

- Flathead County Road and Bridge Department
  - Reason: The property is located along an existing road and staff is uncertain if it is maintained privately or publicly.
- Bigfork Fire Department
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact the Bigfork Fire Department.
- Bigfork Water and Sewer District
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact Bigfork Water and Sewer District facilities.
- Flathead County Solid Waste (FCSW)
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact county facilities.
- Flathead City-County Environmental Health Department
  - Reason: The property is located within the department's jurisdiction.
- Superintendent of Schools
  - Reason: The property is located near existing facilities which may be under the department's jurisdiction.
- Montana Department of Transportation
  - Reason: The property is located along a Montana Highway, and has the potential to impact MDT facilities.
- Montana Department of Revenue, Liquor Licensing (on-premise)
  - Reason: The proposed uses are within the department's jurisdiction and may require a new or modified liquor license sign-off.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

No written public comments have been received to date regarding the conditional use permit request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for September 3, 2013. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead County Road and Bridge Department
  - Comment: At this point the County Road Department does not have any comments on this request.
- Wayne Loeffler, Bigfork Fire Department
  - Comment: Bigfork Fire Department approves of the request for a conditional use permit for FCU-13-07 Swan Junction Inc.
- James Chilton, Flathead County Solid Waste District

- Comment: The District view no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by a private hauler. Allied Waste is the licensed (PSC) Public Service Commission licensed hauler in this area. Their business phone number is 406-676-4330. The rural green box sites operated by Flathead County should not be the primary method of solid waste disposal.
- James Freyholtz, Montana Department of Transportation
  - Comment: I have no comment on the proposal.
- Wendee Jacobs, Flathead City-County Environmental Health Department
  - Comment: The property has an existing Certificate of Subdivision Approval (EQ# 05-2612) approving use for one light commercial business. The proposed property use requires subdivision review of the Lot for compliance with the Sanitation in Subdivision Act before these uses can be approved by this office.
- Julie Spencer, Bigfork Water & Sewer
  - Comment: (via telephone) The property is hooked up to both water and sewer. It was hooked into the sewer main on December 20, 2006. They would need to be reviewed for a change in use.

#### **IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

##### **A. Site Suitability**

###### **i. Adequate Usable Space**

The subject parcel is approximately 1.02 acres, or approximately 44,431.2 square feet in size. The Flathead County Zoning Regulations does not list a minimum lot size for a B-3 zone. The applicant indicates the existing building is approximately 12,000 square feet, and the proposed uses will be split up inside the structure. (See Figure 3) The application indicates the entire first floor of the structure will comprise the 11 room hotel. The art gallery will total approximately 900 square feet, the casino approximately 750 square feet, and the remaining square footage will be the restaurant. Additionally, the property is almost entirely paved, totaling approximately 22,400 square feet using the Flathead County GIS Interactive Map Site (IMS). Section 3.18.040 of the Flathead County Zoning Regulations does not list a value for maximum permitted lot coverage in the B-3 zoning.

The site plan submitted shows 52 individual parking spaces on the subject property. However, the proposed multiple uses will require a total of 55 parking spaces. The submitted site plan also shows a dedicated overflow parking area. As a requirement of the Conditional Use Permit, a condition will be included that all 55 required parking spaces be delineated on-site. Additionally, of those 55 parking spaces, 3 spaces need to be dedicated handicapped parking per the ADA Design Guidelines. Parking spaces are permitted within the front setback in a B-3 zone, however a 5 foot maintained



landscaped buffer is required between the property line and the parking spaces. Based on the submitted site plan and staff's site visit there appears to be adequate space to accommodate the proposed multiple uses on the property.

**Figure 3:** The front of the existing structure (facing east).



**Finding #1** – The subject property appears to contain adequate usable space because the total area is approximately 44,431.2 square feet, there is no maximum lot coverage in the B-3 zone, and there appears to be adequate room to meet the parking and landscape buffer requirements for parking in the front setback.

**ii. Adequate Access**

The subject property is located off the east side of Montana Highway 35, along Swan Way which is a privately maintained road. Swan Way is approximately 25 feet wide and paved. The subject property accesses the roadway from both the front and rear. The rear access is a paved approach approximately 29 feet wide. (See Figure 5) The front access is currently completely open along the front property line. (See Figure 4) Per the parking requirements in Section 6.13.010(2) FCZR, in order for parking spaces to be located within the front setback, a 5 foot maintained landscape buffer is required. Therefore, the existing front access will need to be reduced to a single approach a minimum of 24 feet wide for two-way traffic per Section 6.16.020(3) and Appendix A FCZR. Comment was received from both the Montana Department of Transportation and the Flathead County Road Department indicating neither had any comments at this time. Based on staff's site visit it appears there is adequate sight distances from the existing accesses to enter and exit the property safely.

**Figure 4:** Front property line outlined in red.



**Figure 5:** Existing approach at the rear of the subject property.



**Finding #2** – There appears to be adequate access for the proposed multiple uses because the site plan shows two approaches onto Swan Way which are existing, there is adequate sight distance to safely enter and exit the property

and the existing approaches will be modified to comply with Section 6.16.020(3) and Appendix A FCZR.

**iii. Absence of Environmental Constraints**

The subject property is located on FEMA FIRM panel 30029C2305G, in an unshaded Zone X, which is classified as an area outside the 500-year floodplain. There are no wetlands, streams, or creeks located on the parcel. The subject property is relatively flat with no significant elevation changes. The property is mostly paved open space with a few trees and grass along the southern property boundary.

**Finding #3** – The proposed multiple uses appear to have no environmental constraints because the property is relatively flat, is not located within a designated floodplain, and there are no wetlands, streams or creeks located on the subject property.

**B. Appropriateness of Design**

**i. Parking Scheme**

The number of parking spaces required for all proposed uses on the subject property would total 55 parking spaces. According to the submitted application and site plan, the applicant currently shows 52 individual parking spaces, and an additional overflow parking area. As a condition of approval, the applicant would need to demonstrate they can meet the required 55 parking spaces, and delineate them on-site. The application specifies there will be a maximum of 8 employees for the uses. Within the hotel indicated to have a 1 employee, staff assumes that the art gallery and casino will also have 1 employee. Therefore the remaining 4 employees will be associated with the restaurant. The required parking spaces are broken down as follows:

- Section 6.03.030 of the zoning regulations requires the proposed hotel to have 1 parking space per guest room plus 1 space for every 2 employees per maximum shift. The hotel is proposed to contain 11 rooms therefore 11 parking spaces are required. The applicant has indicated there will only be 1 hotel employee, so 1 additional parking space is necessary. The total number of individual parking spaces required for the hotel is 12.
- Section 6.04.040 of the zoning regulations requires the proposed art gallery to have 1 space for every 500 square feet of gross floor area plus 1 space for every 2 employees per maximum shift. The art gallery is proposed to be approximately 900 square feet. Therefore, a minimum of 2 parking spaces are required, plus 1 space for the single employee. The total number of individual parking spaces required for the art gallery is 3.
- Section 6.07.020 of the zoning regulations requires the restaurant to have 1 parking space per 4 seats plus 1 space per employee. The application indicates the proposed restaurant will contain 100 seats, meaning 25 parking spaces are required. The 4 employees will require 4



additional parking spaces. The total number of individual parking spaces required for the restaurant is 29.

- The Flathead County Zoning Regulations do not list the required number of parking spaces for a casino. Previous Conditional Use Permits for casinos have indicated they require 1 space for every 2 machines plus 1 space for every employee. This ratio appears to be reasonable based on the review and approval of previous applications. The applicant has indicated they would like to install 20 gaming machines. Therefore, a minimum of 10 parking spaces are required, plus 1 parking space for the single employee. The total number of individual parking spaces required for the casino is 11.

Section 6.01.030 [FCZR] requires all parking spaces to be clearly designated and demarcated, therefore, the applicant will be required to clearly designate and demarcate parking spaces. Additionally, the submitted site plan illustrates that some of the parking spaces will be located within the front setback. According to Section 6.13.010(2) FCZR, *'parking is allowed within the front yard setback area within five (5) feet of the adjoining property boundary provided there is a five (5) foot maintained landscape buffer.'* Therefore, a condition of approval will include the construction of a landscape buffer along the front property line. The applicant will also be required to provide handicap assessable parking spaces per ADA guidelines and Section 6.01.010(3) FCZR. Based on the applicant's submitted site plan and staff's site visit to the subject property, there appears to be adequate space for the required parking.

**Finding #4** – While the submitted site plan appears to have adequate space for the required 55 parking spaces, the current parking area does not comply with the parking and loading requirements of the Flathead County Zoning Regulations because the submitted site plan only shows 52 individual parking spaces, the spaces are not currently delineated on-site, and in order to have parking spaces within the front setback, a 5 foot landscaped buffer is required to be maintained between the parking area and the front property line.

**Finding #5** – The subject property is suitable for the proposed multiple uses because there is adequate space to provide the required number of parking spaces, and the delineation of the individual spaces and required 5 foot landscape buffer will be a condition of approval for the requested permit.

## **ii. Traffic Circulation**

The subject property is located off Montana Highway 35, on a paved private road. The private road, Swan Way, includes a 60 wide right-of-way per the recorded subdivision plat, and is currently paved approximately 25 feet wide. Although the applicant claims Flathead County maintains the road, staff received a comment from the Flathead County Road Department stating they will not maintain the private road. Additionally, staff was able to locate a Road Maintenance Agreement (Document #199818009030) which includes the subject property, and states that maintenance of the roadway is shared equally by all parties and lot owners. The site plan shows two approaches: one on the

west and east side of the subject property, both accessing Swan Way. The existing approach at the rear of the property on the east side is approximately 29 feet wide. The approach at the front of the property is currently open the entire length of the front property line. As a condition of approval, the applicant will be required to reduce the approach to a minimum of 24 feet wide for two-way traffic per Section 6.16.020(3) FCZR.

The submitted site plans show a driving lane between the required parking spaces along the front property line to be approximately 20 feet wide for two-way traffic, meeting the requirements set forth in Appendix A [FCZR] based on the angle of the parking. However, the site plan also shows traffic aisles at the south and rear of the property to also be 20 feet wide. According to Appendix A of the Flathead County Zoning Regulations, for 90 degree parking a minimum 24 foot wide traffic aisle is required for two way traffic. The existing paved parking area appears large enough to accommodate the number of proposed spaces and the required internal traffic circulation widths.

**Finding #6** – While there appears to be adequate space for traffic circulation throughout the property, the internal roadway does not comply with the established roadway standards found in Appendix A [FCZR] because the internal roadway must be a minimum of 24 feet wide for 90 degree parking spaces to accommodate two-way traffic ingress/egress; however, the modification of the internal roadway will be a condition of approval for the permit.

**iii. Open Space**

As previously discussed, the existing building covers approximately 12,000 square feet of the subject property. Lot coverage within the B-3 zoning is listed as not applicable. Almost the entire subject property is currently paved for a parking lot. According to staff's site visit, there is a small area of open space along the southern property boundary, and a small strip of open space along the northern property boundary, adjacent to an existing concrete wall.

**iv. Fencing/Screening**

Currently there is an existing concrete block wall separating the subject property from the church located to the north. (See Figures 6 & 7) There is no other fencing located on the subject property. No additional fencing is proposed with the current application. Any future fencing constructed on the property would be required to comply with Sections 5.04 and 3.18.040(7) FCZR.

**Figure 6:** Northern property boundary with existing concrete block wall.



**Figure 7:** Existing concrete block wall along northern property boundary.



**v. Landscaping**

In the B-3 zoning there are no landscaping requirements. The application states, and staff's site visit confirms, there is a small amount of landscaping along the southern property boundary between the subject property and the drive-through coffee stand. (See Figure 7) A 5 foot wide landscaping buffer is required along the front property line per Section 6.13.010(2) FCZR as the applicant is proposing to delineate parking spaces within the front setback.

**Figure 7:** Southern property boundary with existing landscaping.



**Finding #7** – The proposed open space, fencing/screening, and landscaping on the subject property appear adequate because the B-3 zone has no lot coverage requirements, no screening or fencing is being proposed, and the required 5 foot wide landscaping buffer for parking in the front setback will be a condition of approval for the permit.

**vi. Signage**

There are currently 2 existing signs in conjunction with the existing building and previously permitted use. One of the signs is located on the existing structure located on the subject property and is considered a wall sign. (See Figure 8) The second sign is located on the subject property, across the paved portion of the 60 foot wide right-of-way for Swan Way, and is considered a free-standing sign. (See Figure 9) At this time the applicant is not proposing any additional signage. Per Section 5.11.020(11) FCZR the existing building frontage lineal feet allows a maximum sign area of 150 square feet. According to Section 5.11.040(4) the B-3 zoning allows for a combination of free-standing, ground , and off-site signs as long as the combined square footage does not exceed the 150 square foot allowance for the existing building frontage.



Additionally, wall signs are permitted a maximum surface area limited to 40% of the exposed street-front façade. [Section 5.11.020(8) FCZR] According to the Flathead County GIS, it appears the building is approximately 85 feet long. Therefore the wall sign may only be a maximum of 34 square feet. Based on staff's estimates, the existing wall sign may be too large for the property allowance; however the free-standing sign appears to be in compliance. As a condition of approval, all existing signage and any additional signage installed in the future must conform to Section 5.11 of the zoning regulations.

**Figure 8:** Existing signage on the subject property.



**Figure 9:** Existing signage for the subject property across the paved Swan Way, but within the Swan Way 60 foot wide right-of-way.



**Finding #8** – There will be limited impacts resulting from signage because there is existing signage for the proposed uses already on the subject property, the applicant has stated no new signage is proposed, existing and any proposed new signage would be required to comply with sign standards set forth in the Flathead County Zoning Regulations [Section 5.11], and the signage will be inspected to verify compliance at the end of one year.

**vii. Lighting**

There is currently some lighting on the subject property under the eaves of the existing structure. The applicant is not proposing any additional exterior lighting on the subject property. Any future lighting for the subject property will be required to comply with Section 5.12 of the Flathead County Zoning Regulations to prevent the intrusion of artificial lighting in or onto areas other than the subject property.

**Finding #9** – There will be limited visual impacts resulting from lighting because any proposed lighting would comply with applicable requirements set forth in Section 5.12 of the Flathead County Zoning Regulations and the lighting will be inspected to verify compliance at the end of one year.

**C. Availability of Public Services and Facilities**

**i. Sewer**

The subject property is located within the Bigfork Water and Sewer District, and is served for sewer by the District. In a telephone comment from the District, the property has been connected to the sewer system since December 20, 2006. The applicant will be required upon a condition of approval to

contact the District to determine if a review of the sewer system will be required for the multiple principal uses on the subject property. Comment was also received from the Flathead City-County Environmental Health Department indicating the property has an existing Certificate of Subdivision Approval (EQ#05-2612) for one light commercial business. The comment indicates the applicant will be required to go through re-review for the additional multiple uses for compliance with the Sanitation in Subdivision Act, as a total of 4 businesses will be located within the existing structure. Even though the subject property is connected to Bigfork sewer, the applicant must go through review by the Flathead City-County Environmental Health Department as the original approval was reviewed and approved by that agency. As a condition of the permit, the applicant will be required to contact the Flathead City-County Environmental Health Department for re-review of the original approval.

**ii. Water**

The subject property is located within the Bigfork Water and Sewer District, and according to the existing Certificate of Subdivision Approval (EQ#05-2612) the water for the property is served by the District. A comment by the District was received via telephone indicating the applicant will need to contact the District to determine if a review is necessary. It is anticipated the property will need to be re-reviewed by the District for additional impacts incurred by the proposed multiple uses. As a condition of approval, the applicant will be required to connect to the Bigfork Water and Sewer District for water service on the subject property.

**Finding #10** – The proposed use is expected to minimally impact public water and sewer services because water and sewer service is available from the Bigfork Water and Sewer District, the sewer system was permitted under a previous Certificate of Subdivision Approval (EQ#05-2612), and as a condition of approval the applicant will be required to contact Bigfork Water and Sewer District and the Flathead City-County Environmental Health Department to determine if a review of the proposed project is necessary.

**iii. Storm Water Drainage**

It is anticipated that storm water runoff will not increase as a result of this request as the property is currently paved and the structure is already located on-site. The storm water was reviewed during the original Certificate of Subdivision Approval (EQ#05-2612) and plans for dry wells are identified on the submitted site plan. The applicant has indicated that the dry wells are currently in place and are functioning correctly. According to the applicant, there have been no incidents of standing water occurring on the subject property. At this time the applicant is not proposing modifications to the current building and the parking area is already paved. Comment was received from the Flathead City-County Environmental Health Department that re-review of the subject property will be required for the proposed additional uses. It is anticipated that at that time, the storm water management system will be reviewed as well.

**Finding #11** – Impacts of proposed storm water will be mitigated because the dry wells reviewed under the previous Certificate of Subdivision Approval are currently in place and working correctly, no modifications to the current building and paved parking areas are proposed, and the applicant will be required to contact the Flathead City-County Environmental Health Department to determine if re-review of the storm water management plan will be necessary.

**iv. Fire Protection**

The subject property is currently served by the Bigfork Fire Department, and is located 2.1 miles north of the closest fire station. Due to the location of the property along Montana Highway 35, it is anticipated response times in the event of an emergency would not be unreasonably long. Comment was submitted by the Fire Chief of the Bigfork Fire Department indicating they approve the Conditional Use Permit application.

**v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. Response times appear reasonable given the property's proximity to Montana Highway 35, the intersections of Montana Highways 82 and 83, and property's location near the community of Bigfork.

**vi. Streets**

As discussed previously, the subject property is accessed via private road Swan Way and is located off the east side of Montana Highway 35. Swan Way is a paved private road approximately 25 feet wide with a 60 foot wide right-of-way. Although the applicant has stated Flathead County maintains the road, staff's discussion with the Flathead County Road Department indicates they will not maintain the private road. Additionally, staff was able to locate a Road Maintenance Agreement (Document #199818009030) which includes the subject property, and states that maintenance of the roadway is shared equally by all parties and lot owners.

**Finding #12** – The proposed multiple uses appear to have acceptable impacts on public services and facilities because the Bigfork Fire Department and Flathead County Sheriff could provide services to the subject property within an acceptable response time and the property is accessed from a privately maintained road.

**D. Immediate Neighborhood Impact**

Although not a requirement for review of the application, staff contacted the Department of Revenue (DOR) on August 15, 2013 regarding the applicant's approved liquor license. The approved Conditional Use Permit (FCU-04-31) on October 5, 2004 permitted the applicant to commence the use of a tavern on the subject property. A condition of the permit required the applicant to obtain '*any additional State or County liquor licenses for the operation of a Tavern on the subject property.*' Staff reviewed the liquor license #07-999-2581-002 submitted with the previous Conditional Use Permit application. According to the Department of Revenue, the license is valid and active for the property. The applicant will be



required to submit a name change for the license as it is not in the current property owner name; however it is still approved for the subject property. Previous discussions have arisen with the Board of Adjustment regarding the approval of taverns in close proximity to a church or school. In this case, the tavern was permitted prior to the church being built (2006 per CAMA data), and the liquor license is already approved. Per Montana state law, issuance of a license is determined with a three-part test: review of the location of the entrance doors for both the church and the proposed tavern, the physical addresses of the buildings, and the distance between the entrance doors of the buildings. [42.12.129 A.R.M. and 16-63-306 M.C.A.] In this case, the subject property passes the three-part test because the address assigned to the church is located off a different road than the address for the subject property. Therefore, according to the DOR, even if a *new* liquor license was required (which it is not), it could be applied for by the applicant and ultimately be approved.

Additionally, when staff completed their site visit, it was observed that some areas of the property met the definition of ‘Community Decay’ found in Flathead County’s Ordinance No.6. The Community Decay Ordinance states that *‘no person shall maintain a public nuisance by allowing rubble, debris, junk or refuse to accumulate on property owned by him, or under his control, resulting in conditions that are injurious to health, indecent, offensive to the senses or obstructive of the free use of property so as to interfere with the comfortable enjoyment of life or property.’* [Section 3, Ordinance No. 6] Staff observed at the rear of the subject property along Swan Way, which is a roadway open to the public, there were piles of wood and metal debris, along with numerous boat and junk vehicle parts. Therefore, the property is in violation of Section 3(a), 3(c) and 3(d) of Ordinance No. 6 Control of Community Decay. If the application for a Conditional Use Permit is approved, a condition will be included requiring the applicant to clean up the property by removing the wood and iron debris, and the boat and junk vehicles.

**Finding #13** – Existing conditions on the subject property appear to impact the immediate neighborhood because portions of the property observed during staff’s site visit meet the definition of ‘Community Decay’ identified in Flathead County Ordinance No. 6; however, the impacts can be mitigated with the implementation of a condition on the permit requiring the applicant to remove the piles of wood and iron debris and the junk vehicles.

**i. Excessive Traffic Generation**

The closest traffic count site for Montana Highway 35 conducted by the Montana Department of Transportation is located directly across from the subject property. Traffic counts taken by the Montana Department of Transportation for Montana Highway 35 between 2009 and 2011 indicate AADT ranges between 10,880 (actual) to 9,990 (estimated).

Staff was able to utilize the 5<sup>th</sup> Edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual to provide traffic counts for 3 of the proposed activities: the 11 room hotel, restaurant, and casino. The most applicable land use for the proposed hotel was defined as ‘Motel.’ The description given for Motel states, “A motel is a place of lodging providing

sleeping accommodations and often, a restaurant.” According to the 5<sup>th</sup> Edition the Average Weekday Vehicle Trip Ends for Motel is approximately 10.19 per occupied room. Therefore the estimated average vehicle trip per day for the 11 room hotel is approximately 112.

The most applicable land use for the proposed restaurant was ‘High-Turnover (Sit Down) Restaurant.’ The description for this land use states, “This land use consists of sit-down eating establishments with turnover rates generally of less than one hour...Generally, these restaurants serve breakfast, lunch, and dinner, and are sometimes open 24 hours per day.” According to the 5<sup>th</sup> Edition the Average Weekday Vehicle Trip Ends for the restaurant is approximately 6.57 per seat. Based on the number of proposed seats the applicant has indicated for the restaurant, the estimated average vehicle trips per day would be approximately 657.

The most applicable land use for the proposed casino is ‘Drinking Place,’ which is defined as “a drinking place contains a bar, where alcoholic beverages and snack are served; possibly with entertainment such as music, television screens, video games, or pool tables.” According to the 5<sup>th</sup> Edition the Average Weekday Vehicle Trip Ends for Drinking Place is approximately 15.49 per 1000 square feet of gross floor area. The applicant has indicated the gross floor area for the casino will be approximately 750 square feet. Therefore the estimated average vehicle trips per day for the casino would be approximately 12.

Unfortunately there is no listing in the 5<sup>th</sup> Edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual for an art gallery. The most applicable land use for the proposed art gallery is ‘Retail – General Merchandise.’ According to the Manual, the Average Vehicle Trips per day is approximately 4.80 per 1000 square feet of gross floor area. Therefore, for the approximate 900 square foot gallery, the estimated average vehicle trips per day would be approximately 4. Based on all the estimated trips, the proposed multiple principal uses could generate an additional 785 AADT, which would contribute to an increase of 7.6% AADT on Montana Highway 35, based on the average vehicles trips between 2009 and 2011 which is 10,240 AADT. It is anticipated that because Montana Highway 35 is a state maintained highway it would be capable of handling the increased traffic. MDT submitted a comment during agency referrals indicating they do not have any comments on the proposed uses at this time.

**Finding #14** – Additional vehicle traffic associated with the multiple proposed uses are not anticipated to generate excessive traffic which would adversely impact the immediate neighborhood because Montana Highway 35 is an MDT maintained road, the highway experiences over 10,000 vehicle trips per day averaged over the last 3 years, the highway could handle the staff estimated traffic generated from the multiple proposed uses as it would be an increase of only 7.6% AADT, and the road between the subject property and the highway is a private road so no impact to public infrastructure is anticipated.

**ii. Noise or Vibration**

All activity related to the hotel, art gallery, casino/tavern, and the restaurant will be conducted indoors and should not result in excessive noise generation. The proposed gaming machines will produce minimal audible noise within the building when in use, however it is not anticipated this noise will have any impact on the surrounding neighborhood as it will be inside the structure. No noise or vibration beyond what is typical for a commercial area is anticipated as a result of the proposed multiple principal uses.

**iii. Dust, Glare or Heat**

Dust is not anticipated with the proposed multiple uses because the uses will be within an existing structure and the majority of the subject property is paved. Excessive dust is not anticipated as a result of the proposed multiple uses, as Swan Way is paved, the approaches off Swan Way onto the property are paved, and the parking lot is currently paved.

Increased impervious surface area and windows do have the potential to increase the impacts of glare and heat on the subject property as well as surrounding area. However, these impacts can be mitigated by retaining open space on the subject property in conformance with the setback requirements of the zoning and ideally, landscaping these areas or maintaining them as grass.

**iv. Smoke, Fumes, Gas, or Odors**

The proposed multiple principal uses are not expected to create any smoke, fumes, gas or odors beyond those typically associated with commercial activities.

**v. Inappropriate Hours of Operation**

The subject property is located in a B-3 zone within the Bigfork zoning district and is primarily surrounded by other commercial uses. However, there is an existing church located to the north on the adjacent property. According to the application, "Hours of operation will be normal for the business uses." Upon further discussion with staff, the applicant indicated the hours of operation would vary for the different uses proposed. The original Conditional Use Permit (FCU-04-31) issued for the restaurant/tavern did not specify any approved hours of operation, however Montana state law (16-3-304 MCA) permits a tavern to be open from 8:00AM to 2:00AM. The applicant has indicated the hours for the restaurant would be 6:30AM until midnight (12:00AM). The art gallery would be similar hours, but ending around 10:00PM. According to Montana state law 23-5-620 MCA, the casino is permitted to have hours similar to that of a tavern, which permit gambling machines to be played between 8:00AM to 2:00AM. The only use requesting full 24 hour operation is the hotel. The applicant is requesting these hours as it is uncertain when an arriving guest may check-in for the night, or when a departing guest may check-out. The majority of hotels in the area are also open for 24 hours for the same reasons. At this time, no comments from the church have been received indicating they have concerns with the proposed hours of operation. While there may be impacts with the adjacent property to the north, the proposed multiple uses do not appear to have inappropriate hours of

operation as they will comply with the requirements outlined under Montana state law, and will be similar to other commercial uses in the area.

**Finding #15** – The proposed multiple principal uses will not impact the surrounding neighborhood because the uses will not create excessive noise, vibration, dust, heat, glare, smoke, fumes, gas, or other odors, and the subject property, existing approaches, and private roadway are already paved.

**Finding #16** – The proposed hours of operation for the multiple principal uses do not appear to be inappropriate because the proposed hours will comply with the requirements under Montana state law, the proposed uses will operate in a manner consistent with other surrounding commercial uses in the area, and no comments have been received indicating the proposed hours of operation will impact the surrounding neighborhood.

## **V. SUMMARY OF FINDINGS**

**Finding #1** – The subject property appears to contain adequate usable space because the total area is approximately 44,431.2 square feet, there is no maximum lot coverage in the B-3 zone, and there appears to be adequate room to meet the parking and landscape buffer requirements for parking in the front setback.

**Finding #2** – There appears to be adequate access for the proposed multiple uses because the site plan shows two approaches onto Swan Way which are existing, there is adequate sight distance to safely enter and exit the property and the existing approaches will be modified to comply with Section 6.16.020(3) and Appendix A FCZR.

**Finding #3** – The proposed multiple uses appear to have no environmental constraints because the property is relatively flat, is not located within a designated floodplain, and there are no wetlands, streams or creeks located on the subject property.

**Finding #4** – While the submitted site plan appears to have adequate space for the required 55 parking spaces, the current parking area does not comply with the parking and loading requirements of the Flathead County Zoning Regulations because the submitted site plan only shows 52 individual parking spaces, the spaces are not currently delineated on-site, and in order to have parking spaces within the front setback, a 5 foot landscaped buffer is required to be maintained between the parking area and the front property line.

**Finding #5** – The subject property is suitable for the proposed multiple uses because there is adequate space to provide the required number of parking spaces, and the delineation of the individual spaces and required 5 foot landscape buffer will be a condition of approval for the requested permit.

**Finding #6** – While there appears to be adequate space for traffic circulation throughout the property, the internal roadway does not comply with the established roadway standards found in Appendix A [FCZR] because the internal roadway must be a minimum of 24 feet wide for 90 degree parking spaces to accommodate two-way traffic



ingress/egress; however, the modification of the internal roadway will be a condition of approval for the permit.

**Finding #7** – The proposed open space, fencing/screening, and landscaping on the subject property appear adequate because the B-3 zone has no lot coverage requirements, no screening or fencing is being proposed, and the required 5 foot wide landscaping buffer for parking in the front setback will be a condition of approval for the permit.

**Finding #8** – There will be limited impacts resulting from signage because there is existing signage for the proposed uses already on the subject property, the applicant has stated no new signage is proposed, existing and any proposed new signage would be required to comply with sign standards set forth in the Flathead County Zoning Regulations [Section 5.11], and the signage will be inspected to verify compliance at the end of one year.

**Finding #9** – There will be limited visual impacts resulting from lighting because any proposed lighting would comply with applicable requirements set forth in Section 5.12 of the Flathead County Zoning Regulations and the lighting will be inspected to verify compliance at the end of one year.

**Finding #10** – The proposed use is expected to minimally impact public water and sewer services because water and sewer service is available from the Bigfork Water and Sewer District, the sewer system was permitted under a previous Certificate of Subdivision Approval (EQ#05-2612), and as a condition of approval the applicant will be required to contact Bigfork Water and Sewer District and the Flathead City-County Environmental Health Department to determine if a review of the proposed project is necessary.

**Finding #11** – Impacts of proposed storm water will be mitigated because the dry wells reviewed under the previous Certificate of Subdivision Approval are currently in place and working correctly, no modifications to the current building and paved parking areas are proposed, and the applicant will be required to contact the Flathead City-County Environmental Health Department to determine if re-review of the storm water management plan will be necessary.

**Finding #12** – The proposed multiple uses appear to have acceptable impacts on public services and facilities because the Bigfork Fire Department and Flathead County Sheriff could provide services to the subject property within an acceptable response time and the property is accessed from a privately maintained road.

**Finding #13** – Existing conditions on the subject property appear to impact the immediate neighborhood because portions of the property observed during staff's site visit meet the definition of 'Community Decay' identified in Flathead County Ordinance No. 6; however, the impacts can be mitigated with the implementation of a condition on the permit requiring the applicant to remove the piles of wood and iron debris and the junk vehicles.

**Finding #14** – Additional vehicle traffic associated with the multiple proposed uses are not anticipated to generate excessive traffic which would adversely impact the immediate

neighborhood because Montana Highway 35 is an MDT maintained road, the highway experiences over 10,000 vehicle trips per day averaged over the last 3 years, the highway could handle the staff estimated traffic generated from the multiple proposed uses as it would be an increase of only 7.6% AADT, and the road between the subject property and the highway is a private road so no impact to public infrastructure is anticipated.

**Finding #15** – The proposed multiple principal uses will not impact the surrounding neighborhood because the uses will not create excessive noise, vibration, dust, heat, glare, smoke, fumes, gas, or other odors, and the subject property, existing approaches, and private roadway are already paved.

**Finding #16** – The proposed hours of operation for the multiple principal uses do not appear to be inappropriate because the proposed hours will comply with the requirements under Montana state law, the proposed uses will operate in a manner consistent with other surrounding commercial uses in the area, and no comments have been received indicating the proposed hours of operation will impact the surrounding neighborhood.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a multiple principal uses on a single lot is generally supported by the review criteria and the 14 Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-13-07 as Findings of Fact and approve the conditional use permit, the following 15 conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts.

## **VII. CONDITIONS**

1. Operation of the proposed use on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
2. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment [FCZR Section(s) 2.06.010 and 2.06.020].
3. The approved uses shall conform to the applicable standards of the 'B-3 Community Business' zone. [FCZR Section 3.18].
4. A minimum of 55 standard vehicle parking spaces attributable to the proposed uses shall be clearly established and demarcated on the subject property, in accordance with applicable zoning regulations [FCZR Sections 6.01.010, 6.01.030, Appendix A].
5. A minimum 5 foot landscape buffer shall be installed between Swan Way and the parking area located within the in front setback. [FCZR 6.13.010(2)]
6. All proposed parking areas shall comply with Section 6.13 of the Flathead County Zoning Regulations.
7. The approach located at the front of the subject property shall be reduced to a minimum 24 feet wide for two way traffic. [FCZR 6.16.020(3) and Appendix A]

8. The applicant shall contact the Flathead City-County Environmental Health Department to determine if review of the sewer system and storm water management plan is necessary. Documentation confirming the completion of this requirement shall be available upon request.
9. The applicant shall contact the Bigfork Water and Sewer District to determine if review of the water and sewer system is necessary. Documentation confirming the completion of this requirement shall be available upon request.
10. The applicant shall adhere to all applicable Montana State commercial building requirements as required by the Montana Bureau of Labor and Industry. Documentation confirming the completion of this requirement shall be available upon request.
11. The proposed restaurant and casino shall obtain required licensing from the Montana Department of Revenue, as applicable, prior to operation. Documentation confirming the completion of this requirement shall be available upon request.
12. The proposed restaurant and casino shall obtain necessary licensing from the Food & Consumer Safety Section of the Department of Public Health and Human Services, as applicable, prior to operation of the uses. Documentation confirming the completion of this requirement shall be available upon request.
13. Hours of operation for the restaurant shall be 6:30AM until midnight (12:00AM) seven days a week year round. Hours of operation for the casino shall be 8:00AM to 2:00AM seven days a week year round. Hours of operation for the art gallery shall be 8:00AM until 10:00PM seven days a week year round. Hours of operation for the hotel shall be 24 hours per day seven days a week year round.
14. The applicant shall remove the accumulated piles of wood, iron, and junk vehicles from the subject property or shield the materials from public view as required under the Flathead County Ordinance No. 6, 'Control of Community Decay.' Staff will verify compliance with this condition during the final inspection.
15. All signage on the subject property shall comply with all applicable standards and guidelines set forth under Section 5.11 of the Flathead County Zoning Regulations.
16. All lighting on the subject property shall adhere to the performance standards set forth in Section 5.12 of the Flathead County Zoning Regulations.
17. All uses permitted shall commence within one year from the date of issuance of the permit. The permit may be extended for one additional year if the permittee requests additional time prior to expiration date [FCZR Section 2.06.060].
18. At the end of twelve (12) months from the date of authorization of this permit staff will inspect to verify compliance [FZCR Section 2.06.060].

Planner: BM